



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

April 27, 1984

("Manufacturer") is a Massachusetts computer manufacturer. Corporation ("Distributor") is a California corporation that purchases computer equipment from the Manufacturer. You inquire about the Massachusetts sales tax responsibilities of the Manufacturer and the Distributor in the circumstances herein described.

The Distributor resells the equipment it purchases from the Manufacturer to wholesalers and retailers who are registered Massachusetts vendors. The Manufacturer ships the equipment directly to the wholesalers and retailers in Massachusetts. They modify the equipment or add software to it, then resell it, collecting the sales tax on their retail sales to Massachusetts customers.

It is assumed for purposes of this ruling that the Distributor is not engaged in business in Massachusetts within the meaning of General Laws Chapter 64H, Section 1(5).

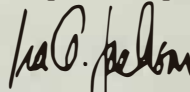
The sales tax is imposed upon retail sales of tangible personal property in Massachusetts by any vendor (G.L. c. 64H, § 2). "Retail sale" is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business (G.L. c. 64H, § 1(13)). All gross receipts of a vendor from Massachusetts sales of tangible personal property are presumed to be from retail sales subject to tax unless the vendor takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor (G.L. c. 64H, § 8).

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Based on the foregoing, it is ruled that the Manufacturer's sales of the equipment to the Distributor will be presumed to be subject to tax unless the Distributor registers as a Massachusetts vendor and gives a Massachusetts resale certificate with respect to each sale. The Manufacturer may overcome this presumption by accepting in good faith from the Distributor a notarized statement on the Distributor's letterhead that it is not engaged in business in Massachusetts within the meaning of General Laws Chapter 64H, Section 1(5), and that it is purchasing the equipment solely for resale to a registered Massachusetts vendor who will resell it in the regular course of business. The statement must include the name and vendor registration number of the Massachusetts vendor to whom the Distributor will resell the equipment.

If the Manufacturer sells equipment to the Distributor for sale by the Distributor at retail to a Massachusetts purchaser, and the Manufacturer ships the equipment directly to the purchaser, the Manufacturer must pay the sales or use tax, based on the Distributor's selling price, on its sale of the equipment (see Letter Ruling 82-97).

Very truly yours,



Commissioner of Revenue

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